



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB4824

Introduced 01/18/06, by Rep. John D'Amico

SYNOPSIS AS INTRODUCED:

35 ILCS 5/1109

from Ch. 120, par. 11-1109

Amends the Illinois Income Tax Act. In a Section concerning demands and seizures, sets forth procedures for financial institutions to surrender, to the Department of Revenue, funds that are subject to a levy for the nonpayment of taxes.

LRB094 17532 BDD 52828 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Income Tax Act is amended by
5 changing Section 1109 as follows:

6 (35 ILCS 5/1109) (from Ch. 120, par. 11-1109)

7 Sec. 1109. Demand and Seizure. In addition to any other
8 remedy provided for by the laws of this State, if the tax
9 imposed by this Act is not paid within the time required by
10 this Act, the Department, or some person designated by it, may
11 cause a demand to be made on the taxpayer for the payment
12 thereof. If such tax remains unpaid for 10 days after such
13 demand has been made and no proceedings have been taken to
14 review the same, the Department may issue a warrant directed to
15 any sheriff or other person authorized to serve process,
16 commanding the sheriff or other person to levy upon the
17 property and rights to property (whether real or personal,
18 tangible or intangible) of the taxpayer, without exemption,
19 found within his jurisdiction, for the payment of the amount
20 thereof with the added penalties, interest and the cost of
21 executing the warrant. The term "levy" includes the power of
22 distraint and seizure by any means. In any case in which the
23 warrant to levy has been issued, the sheriff or other person to
24 whom the warrant was directed may seize and sell such property
25 or rights to property. Such warrant shall be returned to the
26 Department together with the money collected by virtue thereof
27 within the time therein specified, which shall not be less than
28 20 nor more than 90 days from the date of the warrant. The
29 sheriff or other person to whom such warrant is directed shall
30 proceed in the same manner as prescribed by law in respect to
31 the enforcement against property upon judgments by a court, and
32 shall be entitled to the same fees for his services in

1 executing the warrant, to be collected in the same manner. The
2 Department, or some officer, employee or agent designated by
3 it, is hereby authorized to bid for and purchase any property
4 sold under the provisions hereof. No proceedings for a levy
5 under this Section shall be commenced more than 20 years after
6 the latest date for filing of the notice of lien under the
7 provisions of Section 1103, without regard to whether such
8 notice was actually filed.

9 Any officer or employee of the Department designated in
10 writing by the Director is authorized to serve process under
11 this Section to levy upon accounts or other intangible assets
12 of a taxpayer held by a financial organization, as defined in
13 Section 1501 of this Act. A Notice of Levy shall be served on
14 the financial organization and shall require the financial
15 organization to place a hold on funds in the taxpayer's
16 accounts as of the time that the financial organization
17 receives the Notice of Levy or on the rights to payment on
18 intangible assets of the taxpayer that are in the possession or
19 under control of the financial organization as of the time that
20 the financial organization receives the Notice of Levy, up to
21 the amount stated in the Notice of Levy. The financial
22 organization shall surrender to the Department the funds,
23 including interest earned on the funds, that were in the
24 accounts or other assets or rights to payment that were subject
25 to the levy as of the time that the financial organization
26 received the Notice of Levy. The funds, assets, or rights to
27 payment are transferable to the Department by the financial
28 organization on the date or after the time period specified in
29 the Notice of Levy. In addition to any other provisions of this
30 Section, any officer or employee of the Department designated
31 in writing by the Director may levy upon the following property
32 and rights to property belonging to a taxpayer: contractual
33 payments, accounts and notes receivable and other evidences of
34 debt, and interest on bonds, by serving a notice of levy on the
35 person making such payment. Levy shall not be made until the
36 Department has caused a demand to be made on the taxpayer in

1 the manner provided above. In addition to any other provisions
2 of this Section, any officer or employee of the Department
3 designated in writing by the Director, may levy upon the
4 salary, wages, commissions and bonuses of any employee,
5 including officers, employees, or elected officials of the
6 United States as authorized by Section 5520a of the Government
7 Organization and Employees Act (5 U.S.C. 5520a), but not upon
8 the salary or wages of officers, employees, or elected
9 officials of any state other than this State, by serving a
10 notice of levy on the employer, as defined in Section 701(d).
11 Levy shall not be made until the Department has caused a demand
12 to be made on the employee in the manner provided above. The
13 provisions of Section 12-803 of the Code of Civil Procedure
14 relating to maximum compensation subject to collection under
15 wage deduction orders shall apply to all levies made upon
16 compensation under this Section. To the extent of the amount
17 due on the levy, the employer or other person making payments
18 to the taxpayer shall hold any non-exempt wages or other
19 payments due or which subsequently come due. The levy or
20 balance due thereon is a lien on wages or other payments due at
21 the time of the service of the notice of levy, and such lien
22 shall continue as to subsequent earnings and other payments
23 until the total amount due upon the levy is paid, except that
24 such lien on subsequent earnings or other payments shall
25 terminate sooner if the employment relationship is terminated
26 or if the notice of levy is rescinded or modified. The employer
27 or other person making payments to the taxpayer shall file, on
28 or before the return dates stated in the notice of levy (which
29 shall not be more often than bimonthly) a written answer under
30 oath to interrogatories, setting forth the amount due as wages
31 or other payments to the taxpayer for the payment periods
32 ending immediately prior to the appropriate return date. A lien
33 obtained hereunder shall have priority over any subsequent lien
34 obtained pursuant to Section 12-808 of the Code of Civil
35 Procedure, except that liens for the support of a spouse or
36 dependent children shall have priority over all liens obtained

1 hereunder.

2 In any case where property or rights to property have been
3 seized by an officer of the Illinois Department of State
4 Police, or successor agency thereto, under the authority of a
5 warrant to levy issued by the Department of Revenue, the
6 Department of Revenue may take possession of and may sell such
7 property or rights to property and the Department of Revenue
8 may contract with third persons to conduct sales of such
9 property or rights to the property. In the conduct of such
10 sales, the Department of Revenue shall proceed in the same
11 manner as is prescribed by law for proceeding against property
12 to enforce judgments which are entered by a circuit court of
13 this State. If, in the Department of Revenue's opinion, no
14 offer to purchase at such sale is acceptable and the State's
15 interest would be better served by retaining the property for
16 sale at a later date, then the Department may decline to accept
17 any bid and may retain the property for sale at a later date.

18 (Source: P.A. 89-399, eff. 8-20-95.)